IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

SECOND APPEAL NO.1617 OF 2005

Abdul Kasim Shikalgar,
since deceased through his
legal heirs :-
1.1. Shabbir Abdul Shikalgar
and others : Appellants.

versus

Pairanbi Mard Ahamad Shikalgar
and others. : Respondents.

Mr.S.G.Deshmukh for the appellants.
Mr.Umesh Mankapure i/by J.Shekhar & Co. for the Respondent Nos. 1 to 4.

CORAM : D.B.BHOSALE, J.

DATED : JULY 09, 2007.

P.C.

1. The appellants challenge a decree in a suit for partition only to the extent of land Gat No.1383 contending that this was not a suit

property at all and the courts below, without framing an issue as to whether this property should be included as a suit property, decreed the suit for partition in respect thereof. Mr.Deshmukh, the learned advocate for the appellants, submits that this property was not a part of suit property and it is only on the basis of pleadings in the written statement, this property has been made a part of the decree.

2. I perused the judgments of the courts below and more particularly para 14 of the trial Court and paras 14 and 15 of the judgment of the appellate Court. From mere perusal of the judgments of the courts below it appears that Gat No.1383, though was not included as a suit property, in the course of hearing before the trial Court the learned advocate appearing for the petitioner had given no objection for taking the said Gat No.1383 into consideration for the purposes of partition. Such no objection was so recorded by the trial Court in para 14. Keeping that view and considering the fact that this is a suit for partition and separate possession filed by the petitioner against other family members, in my opinion, the submissions of Mr.Deshmukh,

learned advocate for the petitioner, are required to be rejected. Considering the findings on facts recorded by the courts below and as I find sufficient material on record to sustain these findings and considering that no substantial question of law is involved in the instant appeal, this appeal fails and is dismissed as such.

[D.B.BHOSALE, J]